No. 95

In the

Supreme Court of the United States

OCTOBER TERM, 1960

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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No. .....

In the

Supreme Court of the United States

OCTOBER TERM, 1960

LOCAL UNION 984, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ETC., *et al.*,

Petitioners,

v.

THE HUMKO COMPANY, INC. (A Division of National Dairy Products Corporation), RALPH KENT PHILLIPY, and KUHNE-SIMMONS COMPANY, INC., *et al.*,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

International Brotherhood of Teamsters, Francis Murtha, a representative of said International, Local Union 984 of Memphis, Tennessee, and R. A. Farrell, president of said local union, respectfully pray that writs of certiorari issue to review the judgments of the United States Court of Appeals for the Sixth Circuit entered in three cases on February 15, 1961. In the interest of brevity all three cases are presented in a single petition, inasmuch as they were consolidated for purpose of trial and appeal.

OPINION BELOW

The Opinion of the Court of Appeals for the Sixth Circuit (by District Judge Thornton, sitting by designation) rendered in these consolidated cases on February 15, 1961, is reported at 287 F. 2d 231. It is carried in the labor law services at 42 Labor Cases ¶ 16,780 and 47 LRRM 2651, and is set out as Appendix A hereto, pp. A1 to A35, *infra*.

The District Court's unpublished findings and conclusions are reproduced at pp. A40 to A59, *infra*.

JURISDICTION

The judgments of the Court of Appeals were entered on February 15, 1961, Appendix B, pp. A36 to A38, *infra*. Rehearing was denied March 31, 1961, Appendix C, p. A39, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Statement

Local Union, although in dispute with employer at only one location picketed at three sites occupied by primary employer: (1) Memphis, Tennessee, plant 1 (where the local union as the bargaining agent was on strike); (2) Memphis, Tennessee, plant 2 (where there was no union and no strike); (3) Champaign, Illinois (where the plant was not yet in operation; but primary employer was supervising construction and was interviewing and employing production personnel, sending them to Memphis for training at the operating plants, with intention of returning them to Champaign as operating employees upon completion of construction). The Champaign site was jointly occupied by primary employer and three construction firms who were completing the new Champaign plant. The picketing at Champaign, though peacefully conducted with signs truthfully advertising dispute with primary employer, had the effect of inducing construction employees not to cross the picket line, shutting down construction for two weeks.

Question One

Is picketing at (3) *supra* in support of labor dispute at (1) *supra* unlawful under §303(a)(1) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §187(a)?

Question Two

Is picketing at (3) *supra* for the purpose of requiring employer to bargain with union—the certified bargaining agent at another of his plants—protected by the proviso to §303(a)(2) of the Act?

Question Three

Is such picketing protected by the First Amendment?

Question Four

Does an International Union occupy such a "status of parenthood" vis-a-vis a local union chartered under the provisions of the International Constitution to render International liable for "illegal activity" of the local which was committed during a strike?

Question Five

Where peaceful picketing is conducted for an unlawful objective, and results in shutdown of construction, are the following damage claims recoverable under §303(b) of the Act?

A. Damage claims by primary employer:

1. Pay to Pinkerton Service for extra guards.
2. Salaries of office and engineering employees at picketed site.
3. Taxes and insurance on plant property.
4. Interest on investment in plant property.

B. Damage claims by Building Contractor:

1. Claims made upon building contractor by his sub-contractors, evidenced only by invoices and the statement that the sub-contractors "are expecting payment from [Building Contractor]".
2. Wages voluntarily paid to employees who refused to cross the picket line.
3. Duplicate payment for "salaries to supervisors" and "administrative expense".
4. Rental value of construction equipment valued in accordance with employer claims at rates in excess of those on which award was made to other plaintiffs.

STATUTE INVOLVED

The Labor Management Relations Act of 1947 as amended; (61 Stat. 136; 29 U.S.C. §151 et seq.) particularly §303(a)(1) and (2) of said Act,[1] (29 U.S.C. §187) reprinted in Appendix A, *infra*, pp. A31 to A33.

Sections 7 and 13 of that Act are also important to this case. They are set out at Appendix E, p. A60.

[1]This case was tried under the Act effective prior to the 1959 amendments. Changes in form and language by the 1959 amendments did not change the rights and duties here at issue.

STATEMENT

Damage awards aggregating $97,625.30 under §303 of the Taft-Hartley Act, 29 U.S.C. §187, were rendered by the United States District Court at Memphis, Tennessee against Local Union 984, its president; the International Union by which the local was chartered, and an "organizer" for the International. Damage judgments favored Humko Division of National Dairy Products Corporation[2] (the primary employer, $57,013.05); Phillipy and Company (the mechanical contractor employed on the Humko plant site at Champaign, Illinois, $11,264.72); and Kuhne-Simmons Company, Inc. (the principal contractor engaged on the Humko plant site at Champaign, $29,358.52).

The Court of Appeals' summary of the trial court's fact findings (pp. A3-A9, *infra*) ignores undisputed facts; accordingly we here restate the case.

Local 984 was the certified exclusive bargaining agent for employees at Humko's Thomas Street, Memphis plant (207a).[3] The local union sought to bargain for an acceptable collective bargaining contract covering the Thomas Street Humko employees for which it was the certified bargaining agent (295a; 418a*ff.*). Unable to obtain a satisfactory contract, Humko employees authorized Local 984 to call a strike which became effective July 8, 1957 (426a, 209-210a). The purpose of the strike was "getting the company to bar-

[2] Hereinafter called "Humko".

[3] References throughout this portion of the petition for certiorari are to the printed two volume Joint Appendix filed in the Court of Appeals.

gain collectively and get wages and working conditions adjusted properly" (426a).[1]

Picketing to require Humko to bargain with the certified representative of the Memphis Thomas Street plant commenced July 8, 1957, at two locations in Memphis, viz: The Humko Thomas Street plant, and the Humko Pope Street Chemical plant (296a; 307a). The right of the local to picket at the two sites in Memphis was not contested (307a).

On the morning of July 12, 1957, pickets from Local 984, who had been brought from Memphis, Tennessee by an officer of Local 984, formed a picket line at the sole entrance gate to the Midwest Refinery of Humko at Champaign, Illinois, carrying placards bearing the legend (689a-690):

"Production, Maintenance and Drivers
employees of
THE HUMKO CO.
MEMPHIS, TENNESSEE
ON STRIKE
for better wages and working conditions
Members of General Drivers, Salesmen
& Warehousemen Local Union No. 984, AFL."

The picketing in Champaign continued from July 12 through July 23, 1957. Employees of Phillipy, Kuhne and other contractors engaged in construction work appeared for

[1] Each plaintiff concedes in its original complaint that the purpose of the picketing is "compelling Humko in Memphis, Tennessee to make concessions for employees there employed with regard to wages, hours and working conditions in a collective bargaining agreement sought by the defendant Local 984" (4a;20a;33a-34a).

work, but none of such employees crossed the picket line from July 12-23, 1957. The construction work was thus completely shut down by the Champaign picketing (690a), but resumed on the morning of July 24, 1957 (692a).

Both the district court and the Court of Appeals ignored the following undisputed facts:

Humko was doing business at the Champaign site which was picketed.[6] Humko was there engaged, through its own engineer and their staff, in the supervision of construction and in necessary programs and operations concerned with ultimate production such as personnel training programs and hiring (535a; 194; 529-531).

---

[5]It was "approximately two weeks" before a normal resumption of construction work was effected (692a).

[6]Humko's counsel conceded that during the picketing at Champaign Humko was there doing business, viz. (91a-92a, emphasis added):

"MR. CLIFTON: * * * Our position is that there was not production in the sense of oil actually being produced at that time. We think, however, *there were necessary programs and operations concerned with ultimate production, such as training programs, training of personnel and hiring*, and so forth, which can be clarified in the broader sense as production.

"I did not want my statement to be taken as there was no production going on.

"THE COURT: You don't contend Humko was engaged in normal business activities in Champaign during this period, do you?

"MR. CLIFTON: *Yes, I do, Your Honor. It is very much normal to the Humko activities to build that plant and hire and train employees at that plant site, and take them to Memphis for further training, and further, to send them back to Champaign for actual duties on the job.*

"THE COURT: You say no manufacturing production was going on during that time?

"MR. CLIFTON: There was not any actual oil being produced on the premises at that time, to my knowledge. I think *there were preliminary activities in the terms of personnel, which was very much their normal business activities*, however."

[7]This activity was effected by another "division" of the corporate entity. (518a*ff.*; 523a, 193a; 269a; 198a*ff*; 319*ff.*)

Humko was actively engaged in business at this site immediately before and during the picketing.[9] Humko advertised in Champaign newspapers to recruit employees (535a) and conducted employment interviews at the plant office on the construction site in Champaign (194a; 529-531a),[10] and from this point in Champaign referred prospective employees to the Memphis plant for training. (216a*ff*; 300a; 518*ff*.) New employees for Humko were hired at the Champaign site and from this point were sent to Memphis.[10] (529a; 261a*ff*; 300a*ff*.) Materials were shipped to and from the Champaign site via Humko trucks driven by employees within the Memphis bargaining unit (155a-159a; 527a). Labor relations for both the Memphis and Champaign locations were handled centrally by Humko personnel from the Memphis office. (200a*ff*.)

The Trial Court's Conclusions as to the Boycott

The district court filed Conclusions of Law (698a-701a) which held "the primary situs of the labor dispute * * * was at the Thomas Street plant of Humko in Memphis, Tennessee. * * * The placing of the pickets at Humko's

[9] Humko maintained employees (192a; 204a; 299a), an office (191a; 488-489a) and a telephone, listed as Humko's phone, at the Champaign site. (537a) Much of the equipment on the Champaign site was owned by Humko (tanks, 527a; automobiles, trucks, office equipment, 528a; 540a). Humko maintained an office on these premises (191a) and employed a guard force to patrol the property (196a; 218a; 268a). A listing of Humko employees stationed at Champaign will be found in the record at App. 299 and Konald Exhibit 1. (563a). A sign placed on the premises by National advertised to the public that the premises belonged to National-Humko and "clearly identified it as a Humko plant site". (278a).

[10] Humko was committed to a policy of hiring "local people" at Champaign (531a).

[10] During July, 1957, trainees hired in Champaign were working behind the picket line in Memphis in training for eventual return to Champaign where the skills and training acquired in Memphis would be utilized (216a).

Champaign plant constituted a secondary boycott in violation of Section 187(a)(1), Title 29 U.S.C.A. The acts of Local 984 in sending pickets from Memphis, Tennessee, the situs of the primary employer, Humko, to Champaign, Illinois, setting up a picket line at the construction site there, *had the effect of* inducing and encouraging the employees of Phillipy and Kuhne, secondary neutral employers, to strike, or engage in a concerted refusal to work or perform services for Phillipy and Kuhne which, in turn, *had the direct effect of* attempting to force Phillipy and Kuhne to cease doing business with Humko, all of which is prohibited by the act * * *." (699a, Emphasis added.)

Note that the trial court's conclusions of law are made in terms of the effect of the picketing. The statute speaks in terms not of effect, but of objective.

The Damages

The District Court made specific damage awards, making findings as to the basis for each component of the total, and specifying to the penny its damage awards and the bases therefor. Unions asserted to the Court of Appeals that the damages assessed were not based on competent evidence and were not shown to be proximately caused by the picketing. The Court of Appeals, misconstruing the trial court's damage determination as based upon inability to ascertain the damages with certainty, states that uncertainty as to the extent of damages does not preclude damage award. Actually, the trial court had not been uncertain as to the extent of damage. To the contrary, the

trial court findings specified damages to the penny. The question raised, but glossed over by the Court of Appeals, is whether such specifications of damages are actually based on competent evidence and proximately caused by the picketing, viz:

The trial court found (695a-698a) specific items of damage and taxed union for such claims as wages voluntarily paid by plaintiffs to those who would not cross the picket line (697a), pay to "trainees" at the Memphis plant during the period of the Champaign picketing (301a-305a), pay to Pinkerton for guards (695a), salaries of those who did cross the picket line (695a), claims made by subcontractors evidenced only by invoices and hearsay statement that claimants "are expecting payment" (325a-327a, 408a), claims as to rental value of idle construction equipment, duplicate payment for "salaries to supervisors" and "administrative expense" (659a-660a). Union urged to the Court of Appeals that these damage awards were erroneous, based on incompetent evidence and not having been shown as the proximate result of the picketing. The trial court admitted the evidence with respect to these matters for the ostensibly limited purpose of "showing the contentions more or less of these plaintiffs in working this case out" (109a; *cf.* 214a). Yet without other support in the record the trial court transformed plaintiffs "contentions" into damage awards so substantial that a local of less than two thousand workers, with assets of less than ten thousand dollars is saddled with judgments totalling over $90,000.00.

The Court of Appeals held (*infra*, p. A26) that the damage awards were not excessive,[11] but did not mention petitioners' claim that the specified damage items were not shown to be the proximate result of the picketing.

The Responsibility of the International Union

The trial court found that Local 984 was responsible for the Champaign picketing (689a, Finding XIV, 699a, Conclusion IV), yet concluded that the International was subject to liability for the damages which flowed from the local's picketing (699a). See Appendix D, pp. A46, 47; A57.

The Court of Appeals affirmed, holding (*infra*, p. A23) "whether the International Union is liable depends upon the conduct and/or activity of Francis J. Murtha who, during the period involved in this controversy, identified himself as a general organizer of the International Union living in Memphis, Tennessee." Although noting that the local union did not request approval, sanction or assistance from the International in connection with the Humko strike, the Court holds that inasmuch as Murtha participated in the negotiations at Memphis, at times both before and during the Champaign picketing of which Murtha had notice [after it began], and also had knowledge of a complaint (sic) (charge?) filed with NLRB

[11]Except with respect to $13,500.00 item for attorneys' fees which the Court of Appeals disallowed; and items of $10,214.45 and $3,879.45, salaries and expenses of trainees at Memphis as to which there was a remand "with instructions that consideration be given to an adjustment in the award of damages in the event it is determined that the time and expenses of the trainees at Memphis, who were idled as a result of the Memphis strike, are included in the total award." (Infra, p. A 29.) It is clear that the District Court did include these in the award [695a, finding XXII(a) and (b)].

in relation to the Champaign picketing,[12] "it is not unreasonable to believe" that local officials would have cleared with the International before sending pickets to Champaign (*infra*, pp. A23-A24). The Court proceeds to surmise,[13] without any evidence in support, that Murtha must have advised the Joint Council and General President of the picketing in Champaign,[14] and concludes that "the dominion exercised over the Local Union by the International" as evidence by provisions of the International Constitution "establishes a status of parenthood that brings the local union into the family by depriving such local union of that degree of independence associated with, and a necessary ingredient of, an autonomous organization" (*infra*, p. A25). The court concludes that Murtha "and his principal, the International, knew, or should have known, of the secondary boycott in Champaign. By its silence and inaction, the International, through Mr. Murtha, acquiesced in and condoned the illegal activity of the local union * * *." (Ibid).

The Court ignores the undisputed facts that long prior to the strike Murtha advised the Local that there would be

[12]This charge was filed by Kuhne against the *Local Union* only (621a-627a).

[13]The Court's rationale is; *infra* p. A24:

"It is unrealistic to believe that Mr. Murtha, as a paid investigator for the International Union, would not have had facts in his possession which were indicative of a clear-cut violation of a mandatory provision of the constitution of the International Union—that Local 984 was becoming involved in a boycott (Champaign) and in a lawsuit (with the neutral employer and the National Labor Relations Board at Chicago) without giving the Joint Council immediate notice, and thus indirectly the General President of the International Union, of the contemplated action, or of the serious difficulty (the lawsuit). Mr. Murtha would further have us believe that he stood idly by, as a paid investigator of the International Union, and did not make this violation known to his superiors in the International Union."

[14]The trial court did not so find. Nothing in plaintiffs' pleadings so alleges.

no financial help from the International Union (464a), and he knew nothing of the picket line in Champaign "until it was put up there" (460a). Murtha's presence at the negotiations was *solely at the request of employer's attorney* (428a-429a; 449a-450a).

I.

REASONS FOR GRANTING THE WRIT FOR THE LOCAL UNION

A.

Conflict

Petitioners contend that where parties are in a labor dispute, the dispute exists regardless of the locations at which they may find each other.[15]

The Courts below have construed §303 of the Labor Management Relations Act to ban peaceful and truthful picketing of primary employer, Humko, unless the picketing is limited to the locale at which the labor dispute originates. Such holdings are contrary to decisions in other Circuits and to the decisions of N.L.R.B. which hold substantially similar conduct privileged, indeed, protected by other provisions of the same statute.

[15]Note the broad definition of labor dispute in Section 2(9) of the statute:

> "The term labor dispute includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

1.

The Courts of Appeals' Opinions

Three Courts of Appeals explicate the clear right (under Section 7 of the Act) of a union in dispute with employer to picket not only the point of origin of the dispute, but also to direct picketing at the primary employer at other locations. *NLRB v. General Drivers, etc. (Otis-Massey), 225 F. 2d 205 (C.A. 5); Local 618, Automotive, etc. Union v. NLRB (SITE Oil), 249 F. 2d 332 (C.A. 8);* and *Seafarers Union v. NLRB (Salt Dome), 265 F. 2d 585 (C.A.D.C.).*

In the instant case this authority was cited to and specifically rejected by the District Court which held that "the primary situs of the labor dispute * * * was at the Thomas Street plant of Humko in Memphis, Tennessee * * *. The placing of the pickets at Humko's Champaign plant constituted a secondary boycott in violation of Section 187(a)(1), Title 29, U.S.C.A. [Section 303(a)(1)] * * *. The acts of Local 984 in sending pickets from Memphis, Tennessee, the situs of the primary employer, Humko, to Champaign, Illinois, setting up a picket line at the construction site there, had the effect of inducing and encouraging the employees of * * * secondary neutral employers, to strike * * * which * * * had the direct effect of attempting to force [secondary neutral employers] to cease doing business with Humko, all of which is prohibited by the Act." See pp. A56, A57, *infra.*

The Court of Appeals affirmed, refusing to apply the cited holdings from other Circuits because, in its view,

"there is not presented a factual situation which fitted into the mold of the citations" (Slip Opinion, p. 15). Actually, this Court of Appeals is in conflict with the cited authority. For the ultimate facts here, as found by the trial court, when compared with the ultimate facts in *Site Oil*, *Otis-Massey*, and *Seafarers* present the same issue, but the result is different in the Eighth, District of Columbia, and at least one case in the Fifth Circuit.

In *Otis-Massey*, the Fifth Circuit was explicit that

> "no warrant exists * * * under the guise of fact finding to fix the 'situs' of a dispute at only one of a primary employer's numerous business activities * * *
>
> "Irrespective of the * * * situs theory * * * peaceful picketing upon common premises, directed solely against the primary employer with whom a labor dispute exists, is still lawful under the Act, and * * * any adverse effect upon secondary neutral employers must necessarily be viewed as incidental to the lawful exercise of that statutory right (citing cases)." *225 F. 2d 205, 209, cert. den. 350 U. S. 914, 76 S. Ct. 198.*

Similarly, in *SITE Oil* and *Salt Dome*, the Eighth and District of Columbia Circuits have correctly determined that picketing of primary employer at primary employer's place of business (though not the locale at which primary employer alone would be affected by the picketing) is legitimate, even though the effect of such lawful picketing is to induce others there employed to refuse to cross the picket line. As the Eighth Circuit observes in *SITE Oil*, denial of this right obliterates the Congressionally sanc-

tioned concerted activity protected by Section 7 of the Act.[16]

2.

The N.L.R.B. Opinions

Important issues in the administration of the labor laws are presented where NLRB holds lawful the very activity which a court holds exactly similar statutory language to make unlawful and subject to damage award. The damage suit section of the statute (§303) is the exact counterpart[17] of §8(b)(4) which defines "unfair labor practices", which by Section 10, the NLRB is empowered to prohibit.

The instant opinion holds unions liable for substantial damages for engaging in conduct which NLRB holds lawful. Here the courts have held picketing at Champaign "unlawful", "secondary" activity. NLRB has recently held the contrary.

The *Otis-Massey* petition for certiorari thus presented the plea that this court reject the precise position upon which we here rely. Certiorari was denied, *350 U. S. 914, 76 S. Ct. 198.*

[16]The courts below were obviously led to their finding that the Champaign picketing was secondary by an earlier case in the Sixth Circuit, *United Brick & Clay Workers v. Denna Artware, 198 F. 2d 637*, decided on much different facts; inasmuch as the picketed property in *Deena* was not occupied in any sense by the primary employer. See *198 F. 2d 637 at 641.*

Here, the Champaign picketing was at a principal place of business, occupied by Humko, indeed, the Champaign premises were the hiring point for potential strikebreakers in Memphis (194a, 261a, 530-1a; pp. 8*ff supra*), and Humko acted through its own engineering staff and was in effect its own general contractor. These factors distinguish the Second Circuit's *NLRB v. Associated Musicians, 226 F. 2d 900* upon which the courts below relied. See 699a. These factors also make inapposite *Deena Artware* where "the physical facts * * * show clearly that it was not necessary to extend the picket line around the area of construction in order to cover all the entrances to the existing plant and warehouse * * *." *198 F. 2d 637 at 643.*

[17]In *IBEW v. NLRB, 341 U. S. 694*, this Court noted that §8(b)(4) and §303 are exactly similar and the "words are entitled to the same meaning", *341 U. S. at 703.*

In the case of *International Brotherhood of Teamsters, etc. (Alexander Warehouse), 128 NLRB No. 105; 46 LRRM 1409*, decided August 25, 1960, where a strike in Joliet was followed by picketing of other warehouses of the same employer in other cities, the NLRB says that such picketing does not violate the Act, viz:

> "• • • we find that Respondents' picketing and related conduct at Alexander's Peoria and Urbana warehouses was lawful primary activity. Though the economic dispute with Alexander directly involved only Alexander's Joliet employees, Respondents had the right to bring pressure upon Alexander at each and every one of its warehouses. The Peoria and Urbana warehouses are no more to be considered neutral premises for purposes of applying the provisions of Section 8(b) (4) (A) than are the premises of an employer who 'allys' himself with a primary employer. Under the 'ally' doctrine a union may engage in picketing at the operations of a primary employer and at all operations of employers who 'ally' themselves with the primary employer, under the same conditions as govern its picketing at the primary employer's premises. • • • [citing Int'l. Union of United Brewery etc. (Coors Co.) v. NLRB, 272 F. 2d 817 (C.A. 10)] • • •."

Moreover, NLRB holds that the secondary boycott provisions of Section 8(b)(4) [the exact counterpart of §303] "do not isolate one store in the company's chain from other stores therein, nor do those provisions provide that economic pressure may be applied upon a primary employer only at the segment of his operations at which the immediate dispute arose." *In re Retail Clerks etc. AFL-CIO (Montgomery Ward), 122 NLRB 1264.* State courts at common law uniformly so hold. See Annotation: "Picketing by employees of a plant where labor dispute exists, at an-

other plant of employer where there is no labor dispute", *37 ALR 2d 687 (1954)*.

3.

The "Reserved Gate" and INTERNATIONAL RICE MILLING cases

This Court has recognized the importance of a related problem in its grant of certiorari this term in No. 321, *International Union of Electrical Workers etc. v. NLRB*, involving picketing of a "reserved gate" of a primary employer. The instant case is even stronger, for here union picketed only the single gate used *in common* by primary employer and others. In *Electrical Workers* the picketing in issue was *only* at the gate reserved for employees of "secondary" employers. If such picketing is lawful, *a fortiorari*, the instant picketing is proper. If the *Electrical Workers* case is decided against the union, there yet remains open the questions here presented.

This case, like the *Electrical Workers* case, poses the question raised and partially answered in *NLRB v. International Rice Milling Co., Inc., 341 U. S. 665, 71 S. Ct. 961*: Is the proscription in §8(b)(4) (hence also §303) applicable to inducement of employees of neutrals to engage in concerted stoppage at the site occupied by the primary employer, in view of the protection of the right to strike contained in §13 of the Act? This Court held that

> "A union's inducements or encouragements reaching individual employees of neutral employers only as they happen to approach the picketed place of business *generally are not aimed at concerted, as distinguished from individual*, conduct of such employees. Generally

therefore, such actions do not come within the proscription of §8(b)(4), and they do not here." *341 U. S. 665, 671* (Emphasis added).

Does the reach of §13 there enunciated include picketing of the primary employer at all places where he does business, especially business closely related to the activity of the bargaining unit which is on strike? This question was expressly answered by the Eighth Circuit in the *SITE Oil* case *(249 F. 2d 332, 336-338)*, which held that "where lawful picketing in support of a valid primary strike is in progress against the primary employer at the employer's premises [albeit when such premises are occupied by employees of neutral employers only], the 'an object' test, applied by the Board is too narrow, and there should be evidentiary support for a conclusion that the primary picketing serves no lawful purpose." The Court there noted that the picketing throughout had the same purpose, to-wit, "obtaining of collective bargaining rights from the primary employer."[18]

In view of the conflict among the Circuits, it is of vital concern to all in the field of labor management relations that the Supreme Court indicate the extent of the *International Rice* rule.

B.

The Right of Free Speech

Even more important than conflict, is the devastating importance of a holding which limits laborers in dispute

[18] In the instant case, employers' own witnesses acknowledged that the purpose of the picketing at Champaign was "exactly the same" as at Memphis: "to give as many people, individuals [sic. *individually*?] at Champaign, Illinois, notice of that picket line * * *." (177a)

with a far flung corporation to protest at only that portion of the employer's enterprise where a strike is current. Such limitation upon "the workingman's means of communication" has grave constitutional implications.[19]

If the decisions below stand, union is foreclosed from advising those hired in Champaign, and about to be shipped to Memphis, that they are about to be misused by employer in a labor dispute, and it is foreclosed from advising individuals who approach the premises of the struck employer of its labor dispute. This raises serious First Amendment questions. While *Carpenters Union v. Ritters Cafe, 315 U. S. 722*, empowered restraint of picketing aimed at an industry which had no *nexus* with the primary dispute, this court was at pains to note that there had been no attempt "to protect other business enterprises of the building contractor, Plaster, who is the petitioners' real adversary. We need not therefore consider problems that would arise if [the State] had undertaken to draw such a line" *315 U. S. 722 at 727*. The instant case presents such "problem" with respect to the allowable area of free communication. We assert that to draw the free speech circle so narrowly as to encompass only one of a primary employer's many plants is to deny free speech.

C.

The Importance of the Picketing Issue

The use of §303 to insulate an employer from effective protest by his employees is an important, oft-recurring

[19]The picketing of Humko has at least some aspects of constitutionally protected free speech. *Thornhill v. Alabama, 310 U. S. 88; Chauffeurs, etc. v. Newell, d/b/a El Dorado Dairy, 356 U. S. 341.*

problem. NLRB (even in its conservative era) has refused to read the boycott sections as obliterating the Section 7 rights of concerted activity, including picketing.[20] See Appendix E, *infra*, p. A60. Yet the courts below read §303 to flatly prohibit picketing which was the only means by which potential strikebreakers could be advised—at the point at which they were hired—that they were about to be injected into a labor dispute at the point to which they were ostensibly being set for "training". For as we have detailed at p. 9, *supra*, the Champaign site was the Humko hiring situs, thus the one best place at which union could communicate with potential employees.

But entirely aside from the strong equities of the instant case, the problem is grave and widespread. Corporate enterprise meets the public at many places. Are workers to be deprived of a right to advertise grievances at primary employers' multitudinous places of business? Humko does not confine its business activity to Memphis, Tennessee. As a part of a two and one half billion dollar corporation it functions nationwide.[21] Employees in primary and legiti-

[20] See Appendix E, *infra*, p. A 60.

[21] Humko is a "Division" of National Dairy Products Corporation (516a, 205a, 310a) which has "some sixty or seventy operating divisions" 283a. See Moody's Industrial Manual, 1959, p. 2616, listing National Dairies' hundreds of plants throughout the nation; and noting its budget of over 57 million for capital expenditures in the current year.

Standard and Poor's, "Standard Corporation Descriptions" (1959), p. 2965, describes National Dairy Products corporation as "the largest unit in the dairy products field * * *" and continues:

"Under a plan of integration designed to improve efficiency and effect income tax savings, the company in 1956-57 took over and is operating as divisions the properties, businesses, and affairs of its former principal domestic subsidiaries."

(Then a list of wholly owned subsidiaries follows.)

Property—"Because of the nature of the business, numerous relatively small plants are operated in widely-scattered locations."

Net Value of property—$253,422,000 in 1958.

Net sales in 1958—$1,451,245,000.

mate dispute with such a monstrous corporate adversary should not be required to limit their protest to a small area while their antagonist operates nationwide, insulated from publication of employee protest. Any national corporation in dispute with its employees is enabled to draw on nationwide resources to win its labor dispute. Similarly employees are entitled to utilize constitutional and statutory rights of concerted activity and publication of their grievances at the points at which their adversary operates.

D.

The Damage Issues

This case presents questions regarding the proper measure of damages under Section 303 of the Act. There is serious need for guidance from this Court in the area of damages under §303. This Court has never indicated what is the measure of damage in such suits, though there has been much lower court litigation under this section of the statute.[22] Indeed, in the instant case divergent theories of damages were applied in the district and appellate courts. At the trial issues arose as to the propriety of specific damage award for such items as wages paid to workers who would not cross the picket line [Finding XXII(a), p. A52]; salaries to workers who did cross [Finding XXII(b), p. A53]; taxes on the picketed land [Findings XXII(g), p. A53]; premium pay for equipment rental [Finding XXIV

[22] *E.g. Mine Workers v. Patton (CA 4; 1954), 211 F. 2d 742; Osborne Mining Co. v. Mine Workers (DC Tenn.; 1959), 38 Labor Cases ¶65,741; Carpenters, Local 131 v. Cisco Construction Co. (CA 9; 1959), 266 F. 2d 365; Mine Workers v. Lambert, (CA 4; 1954), 214 F. 2d 487; Mine Workers v. Meadow Creek Coal Co. (CA 6; 1959), 263 F. 2d 52; Longshoremen v. Juneau Spruce Corp. (1952), 342 U. S. 237; Longshoremen v. Hawaiian Pineapple Co. (CA9; 1955), 226 F. 2d 875; Brick & Clay Workers v. Deena Artware, Inc. (CA 6; 1952), 198 F. 2d 637.*

(a), p. A54]). These, and other questionable items were held to be recoverable, contrary to our contention that such expenses were not proximately caused by the Champaign picketing.

The Court of Appeals ignored the question as to proximate cause, and held in effect that once picketing for unlawful purpose is shown it is proper to tax union a lump sum, even though its components are unascertainable. This view results in union paying for plaintiffs' gratuitous undertaking to pay bills tendered by others, but wholly unsupported (Finding XXIV, 698a); wages gratuitously paid to employees who refused to work during the picketing [Findings XXII(a), 695a; XXIV(b), 697(b)]; expenses of Pinkerton guards [Finding XII(c), 695a] though plaintiff acknowledged that it had not intended to increase the guard service, "that was Pinkerton's idea" (121a; Cf. 267a-268a); taxes on vacant land, where no building was even contemplated and where plaintiff admitted tax assessments would have been exactly the same regardless of the picketing. [Cf. Finding XXII(g), 696a; 277a, 278a, Cf. 213a.]

These, and many other items are specified in the trial court's findings as specific base for the enormous damage awards. Gross error in basing awards on such computations is apparent in some instances from the face of the trial court's findings. We will present detailed consideration of these in the event petition is granted. Passing reference to our brief in the Court of Appeals, pp. 35-38; 41-57, discloses the careful analysis of the trial court's damage findings and awards, which will be fully presented upon granting of petition.

II.

REASONS FOR GRANTING THE WRIT FOR INTERNATIONAL UNION

International is not liable for acts of local union

It has heretofore been generally held that a local union is an entity apart from the International union by which it is chartered, and that International is not liable for the unlawful acts of a local union absent proof of participation, authorization or ratification.

Yet in the instant case the Court of Appeals enunciates a new theory by which it is held that International occupies "a status of parenthood * * *" vis-a-vis the local union, and that such family status makes International responsible for the torts of the local of which International had knowledge, or should have had knowledge (p. 23a, *ff, infra)* .The specific holding is that "by its silence and inaction, the International, through Murtha acquiesced in and condoned the illegal activity of the Local Union at a time when there was full opportunity to step in and prevent such activity. Therefore the International is liable as a principal actor in bringing about a secondary boycott." (p. 25a, *infra*)

This doctrine (which finds no support in the International Constitution)[23] is flatly contrary to *Coronado Co. v. United Mine Workers, 268 U. S. 295, 299; United Mine Workers v. Coronado Co., 259 U. S. 344, 393; Morgan Driveway, Inc. v. Intl. Brhd. Teamsters, 268 F. 2d 871 (C. A. 7), cert. den. 361 U. S. 896; United Construction Work-*

ers v. Haislip Baking Company, 223 F. 2d 872 (C. A. 4), cert. den. 350 U. S. 874; DiGiorgio Fruit Corp. v. NLRB, 191 F. 2d 642 (C.A.D.C.); Pennsylvania Mining Co. v. United Mine Workers, 28 F. 2d 851 (C. A. 8), cert. den. 279 U. S. 841.[24]

In its administration of the National Labor Relations Act the NLRB has followed "the overwhelming weight of judicial authority * * * that a local union is a legal entity apart from its International and that it is not a mere branch or arm of the latter." *In re International Brotherhood of Electrical Workers (Franklin Electric Construction), 121 NLRB 143 at 146*, and the numerous cases there cited.

Quite aside from running counter to "the overwhelming weight of judicial authority", the decision below runs askew recently reiterated Congressional policy. The whole thrust of Title III of the Landrum-Griffin Act (Labor Management Reporting and Disclosure Act of 1959) 73 Stat. 519, 29 U.S.C.A. §401 et seq. at §461ff., is to pre-

[23]Portions of the Constitution are cited out of context in the Opinions below. The relevant provisions, ignored below, make clear that Teamster locals are autonomous. The Seventh Circuit is specific to this effect in holding this very International a separate entity from the local. *Morgan Driveway v. Intl. Brhd. of Teamsters, 268 F. 871 (C.A. 7).* The courts below ignored Article XII, Sec. 10 of the International Constitution which provides in effect that International shall not be responsible for strike or picketing damage occasioned by acts of a local union.

[24]Compare *Mile Branch Coal Co. v. United Mine Workers (D.C.D.C.), F. Supp. , 42 LRRM 2169 (May 1958); Azel Newman v. Sheet Metal Workers, 3 Utah 2d 377, 277 P. 2d 922; Ford v. United Brotherhood of Carpenters, 315 P. 2d 299 (Wash.); Harker v. McKissock, 7 N. J. 323, 81 A. 2d 480; DeMaio v. Local 80-A, United Packinghouse Workers, 29 N. J. Super. 541, 102 A. 2d 480; Seidner v. Fish, 131 Misc. 203, 226.*

serve the autonomy of the local union and limit the intrusion of the International in locals' affairs.[25]

Basic to responsibility is the right to control. Both judge-made and statutory law make clear the impropriety of international control of a local union except in narrowly defined circumstances not here present. And in the areas where such control is permissible it can be only after strict observance of procedural due process,[26] in strict conformity with the International Constitution,[27] and in accord with both the procedure and substance of Title III of the new Act.

The thrust of both the common law and the legislatures is to limit control from afar, and rely upon the autonomous judgment of the local members to control the local union. The instant opinion requires the very opposite. For if International treasuries are to be raided because Interna-

[25] See Senate Labor Committee's Report, 86th Cong. 1st Sess., Senate Report No. 187, p. 17, which discloses that the Congress "acted favorably upon the recommendation that there should be a limitation upon the right of internationals to place local unions in trusteeship."

[26] Under the International Constitution, the International had no authority to step in summarily and order the cessation of picketing at Champaign. The trial court's holding that "the International controls locals and their membership through the provisions relative to trials and appeals of local officers and members," (694a) is itself a contradiction of the alleged control by the International, for Article XVIII, Section 1(a) of the International Constitution provides that such trial be "by the *local union* Executive Board." (Emphasis added.) The appellate system providing for review by units of the International on appeals from aggrieved members is of course no evidence of control of the local by the International, such review being comparable to judicial review. The actual power to make decisions in strike situations, especially when the International is not paying strike benefits, rests entirely with the local, and International control exists only through the extreme device of trusteeship, which device can be used only in accordance with constitutional procedures designed to provide due process for members of the local.

[27] The International Constitution (314a, Exhibit A), especially Article XXI entitled *Local Unions*, and Article XXIII providing Rules of Order for Local Unions, makes it redundantly clear that a local union makes its own laws, elects and removes its own officers through the exercise of democratic decisions by the local membership only.

tional unions occupy the "status of parenthood", obviously the International parent must control and discipline the recalcitrant offspring. Recent trends have been in the direction of assuring even less "control" by International and more "democracy" and "autonomy" at the local level. A decision which reverses this trend is of extreme importance.

The constitutions of almost all International unions contain provisions comparable to those mentioned by the court below (A9-A12, A25) as demonstrating the "status of parenthood" which spells liability. This case thus affects not just the Teamsters International,[28] but the labor movement.

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[28]A much narrower version of this question was refused review in *International Brotherhood of Teamsters, etc., et al. v. U. S., 275 F. 2d 610, C.A. 4, cert. den., 362 U. S. 975*, where International was held jointly responsible for acts of an agent of a local union which was being operated under International supervision by a trustee appointed by the International Union. Supervision had been imposed under Article VI, Sec. 5(a) of the International Constitution by which a temporary trustee is empowered "to take charge and control of the affairs of such Local Union". Here the local is autonomous.

CONCLUSION

WHEREFORE, petitioners pray that writs of certiorari be granted, and that upon final hearing the judgments below be reversed.

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